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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/775,381 | 02/10/2004 | Peter Dawson | DAWSON-001 | 9951 |
| 34111 | 7590 | 12/27/2004 | EXAMINER | |
| STEPHEN J. LEWELLYN 933 OLEANDER WAY SOUTH SUITE 3 SOUTH PASADENA, FL 33707 | | | DUONG, THO V | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3743 | |

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/775,381 | DAWSON, PETER |
| | Examiner Tho v Duong | Art Unit 3743 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 October 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-44 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 1-44 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Receipt of applicant's response to restriction is acknowledged. Claims 1-44 are pending.

Election/Restrictions

Claims 6-7,11-24,26-35 and 38-44 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/14/2004.

Response to Amendment

The reply filed on 10/14/2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): applicant fails to elect one from each of the additional group of species. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The examiner agrees with the applicant that figures 6a,6b and 6c do not show several distinct species of attaching a support element but different species of flow diverter. It appears that the applicant has correctly indicated the claims that read on the elected of species. However, for a complete response, applicant is required to response to each group of species. The restriction requirement is followed:

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-38, drawn to an invention of a bulk material heat exchanger, classified in class 165, subclass 166.
- II. Claims 39-44, drawn to an invention of a method of automated cleaning of an exterior surface of a heat exchanger, classified in class 134, subclass 21.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as a method as in claim 39 or 41 or 42 or by hand brushing the heat exchanger.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

If applicant elects group II, which relates to a method of automated cleaning of an exterior surface of a heat exchanger, applicant is further required to elect one of the several distinct method of cleaning as shown in figures 20; 21c; 22a; 22b; 22c; 23 and 24 in which method of figure 20 utilizing vacuum cleaning methods and the rest of the species involve different rotating support bars and cam structure for cleaning the heat exchanger.

This application contains claims directed to the following patentably distinct species of the claimed invention:

If applicant elects group I, which relates to an invention of a bulk material heat exchanger, applicant is required to elect one from each group of the species as follows:

Group A:

There are six distinct species of heat exchangers:

Species A: Figure 1

Species B: Figures 7,8a and 8b

Species C: Figures 9, 10a and 10b

Species D: Figures 11,12 and 13a

Species E: Figures 13b and 13c;

Species F: Figures 14 and 15.

Group B:

There are several distinct species of flow diverters, the species are identified as the species of figures 6a; 6b; and 6c.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each group of species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Note: an example for a complete response may include : an election of group I, species A; and 6a, which reads on claims 1-5,8-10,25,36 and 37. This is an example and not an actual response.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

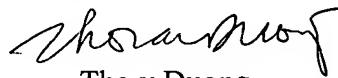
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tho v Duong
Examiner
Art Unit 3743



TD
December 22, 2004